THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.18323 OF 1994

DATED: 12th FEBRUARY, 2007.

Between :

Mohd. Murtuza Ali Khan
... Petitioner

And

1. Administrator Kulikutihshah Urban Development Authority, Danulshafa, Hyderabad.,
   And 2 others.
   .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.18323 OF 1994

ORDER :

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The petitioner herein claims to be the owner and possessor of lands bearing Sy.Nos.214, 222 and 223 of Malakpet Village to an extent of Ac.3-22 guntas having purchased under a Registered Sale Deed dated 14.3.1349 Fasli. Since the said land is situated by the side of Musi River at Chaderghat, the same was acquired by Municipal Corporation of Hyderabad for the purpose of construction of causeway on Musi river by Qulikhutub Shab Urban Development Authority. According to the petitioner, an extent of 2000 sq. yards belonging to him was utilised for the purpose of construction of causeway. However, he was paid only a sum of Rs.1,76,000/- by way of compensation in respect of the land to an extent of 1041 sq. yards at the rate of Rs.169/- per sq. yard. Aggrieved by the said action of the respondents, this writ petition is filed contending inter alia that the payment of compensation at the rate of Rs.169/- per sq. yd. is illegal and arbitrary since the prevailing market value in the locality is not less than Rs.2,000/- per sq. yard. It is also contended that whereas about 2000 sq. yards was acquired for the purpose of construction of causeway, the respondents had paid compensation only to an extent of 1041 sq. yards. Hence, a Writ of Mandamus is sought directing the respondents to act according to law and fix up the rate of the land to an

extent of 2000 sq. yards belonging to the petitioner on the basis of prevailing market value and pay the same to the petitioner.

On behalf of the 1st respondent – Qulikhutub Shah Urban Development Authority, a counter-affidavit has been filed stating that the Municipal Corporation of Hyderabad had taken possession of the land belonging to the petitioner admeasuring 1041 sq. yards only but not 2000 sq. yards as claimed by the petitioner. It is further stated that the land was taken possession with the consent of the petitioner. Thereafter, in the meeting held on 29-6-1994 it was decided by the Principal Secretary to Government that it is not necessary to issue a notification under the Land Acquisition Act since the possession was taken with the consent of the owner and that it would be reasonable to pay the compensation at the rate of Rs.169/- per sq. yard. Accordingly, a sum of Rs.1,76,000/- was paid by way of compensation to an extent of 1042.11 sq. yards. The claim of the petitioner that there were 11 residential dwellings in the land in question has been denied. The allegation that 2000 sq. yards was utilised for the purpose of construction of causeway has also been specifically denied and it is stated that only an extent of 1041 sq. yards was utilized, after the petitioner had agreed the rate of compensation payable at the rate of Rs.169/- per sq. yard.

A separate counter-affidavit has been filed on behalf Municipal Corporation of Hyderabad stating that for the purpose of construction of causeway only an extent of 1041.11sq. yards belonging to the petitioner was utilised and in the High Level Meeting held on 29-6-1994 the petitioner had agreed to receive the

compensation fixed by the 1st respondent at the rate of Rs.169/- per sq. yard. Accordingly, a sum of Rs.1,76,000/- was already paid. All further allegations made by the petitioner have been denied and it is stated that since the 1st respondent had obtained the consent of the owner as required under Section 146 of Hyderabad Municipal Corporation Act, 1955, it is not necessary to follow the procedure prescribed under the Land Acquisition Act.

I have heard the learned Counsel for both the parties and perused the material on record.

In the light of the version of the respondents in their counter-affidavits and in the absence of any further material to contradict the same, the claim of the petitioner that an extent of 2000 sq. yards belonging to him was utilised for the purpose of construction of causeway cannot be accepted.

Then, coming to the rate of compensation payable, Section 146 of the Hyderbad Municipal Corporation Act, 1955, runs as under :

> *"**Section 146 Acquisition of immovable property by agreement** :- Whenever it is provided by this Act that the Commissioner may acquire, or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire, any immovable property, such property may be acquired by the Commissioner on behalf of the Corporation by agreement on such terms at such rates or prices not exceeding such maximum as shall be approved by the Standing Committee, either generally for any class of cases or specially in a particular case.*
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> *(2) And whenever, under any provision of this Act, the Commissioner is authorized to agree to pay the whole or any portion of the expenses of acquiring any immovable property, he shall do*

so on such terms and at rates of prices not exceeding such maximum as shall be approved by the Standing Committee as aforesaid.

(3) Subject to the provisions of this Act, it shall be lawful for the Commissioner on behalf of Corporation to agree with the owner of any land or of any interest in loan needed by the Corporation for the purposes of any Scheme under Chapter XII or with the owner of any right which may have been created by legislative enactment over any street forming part of the land so needed, for the purchase of such land or for compensating the owner of any such right in respect of any deprivation thereof or interference therewith.

(4) No contract for the acquisition of any immovable property or of any interest therein or any right thereto or the payment of any compensation under sub-sections (1), (2) or (3) shall be valid, if the price or compensation to be paid for such property or interest or right exceeds rupees five thousand unless and until such contract has been approved by the Corporation.

(5) Every contract or other instrument relating to the acquisition of immovable property or any interest therein or any right thereto shall be executed by Commissioner, shall have the common seal of the Corporation affixed thereto in the presence of two officers nominated by the Commissioner and shall also have the signature of the said two members, in the manner provided in Section 125.

(6) No contract for the acquisition of immovable property or any interest therein or any right thereto not executed as provided in sub-section (4) shall be binding on the Corporation.

(7) The foregoing provisions of this section which apply to an original contract relating to the acquisition of immovable property, or any interest therein, or any right thereto, shall be deemed to apply also to any variation or

discharge of such contract."

It is clear from the above provision that it is always open to the Corporation to acquire the land by agreement on payment of compensation at the rate approved by the Standing Committee either generally for any class of cases or specially in a particular case.

In the counter-affidavits, it is stated that on 29-6-1994 in the High Level Meeting it was agreed by the petitioner to receive the compensation at the rate of Rs.169/- per sq. yard as fixed by the Government.

The learned Counsel for the petitioner has relied upon a decision in USHODAYA PUBLICATIONS vs. COMMISSIONER, M.C.H.[1] in which the Full Bench of this Court had considered the question as to whether the possession of the land in occupation of a lessee can be acquired by Municipal Corporation of Hyderabad without recourse to compulsory acquisition only on the basis of consent given by the land lady. The Full Bench has answered the question in negative observing that the Corporation has no right to take forcible possession of the land in question on the basis of the purported consent obtained from the lessor without taking recourse to the provisions of the Land Acquisition Act.

The ratio laid down in the said decision is not applicable to the case on hand, since in the present case we are concerned only with the rate of compensation payable apart from the extent of the land utilised for construction of causeway.

The learned Counsel for the petitioner has also cited the decisions in BHIKRAJ v. UNION OF INDIA[2], JILUBHAI NANBHAI KHACHAR v. STATE OF GUJARAT[3],

REV. DIVN. OFFICER, GUNTUR v. VASIREDDY [4], HINDUSTAN AERONAUTICS LTD., BANGALORE v. MUNISWAMY REDDY[5] and SPECIAL DEPUTY COLLECTOR v. KURRA SAMBASIVA RAO[6].

The facts in none of the cases are similar to the facts in the case on hand and therefore the said decisions are of no assistance to the petitioner's case .

As noted above, the specific version of the respondents is that the petitioner himself has agreed for payment at the rate of Rs.169/- per sq. yard. Such acquisition under Section 146 of the Hyderabad Municipal Corporation Act, 1955 is permissible by paying compensation through negotiations. The initiation of proceedings under the Land Acquisition Act is necessary only in the event of failure of negotiations under Section 146 of the Hyderabad Municipal Corporation Act, 1955. In the case on hand, admittedly the petitioner received a sum of Rs.1,76,000/- at the rate of Rs.169/- per sq. yard.

The procedure adopted by the respondents in terms of Section 146 of the Hyderabad Municipal Corporation Act, 1955 cannot be held to be either arbitrary or without jurisdiction. The further contention raised by the petitioner as to the extent of the land being purely disputed question of fact cannot be enquired into under Article 226 of the Constitution of India.

For the aforesaid reasons, no Writ of Mandamus can be issued compelling the respondents to initiate the proceedings under the Land Acquisition Act and pay compensation as claimed by the petitioner.

The Writ Petition is accordingly dismissed. No

costs.

G. ROHINI, J.

Dt. 12-2-2007
gbs

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[1] 2001 (2) ALT 662 (F.B.)
[2] AIR 1962 SC 113
[3] AIR 1995 SC 142
[4] AIR 1970 Andhra Pradesh 262 (FB)
[5] AIR 1993 Karnataka 77
[6] AIR 1997 SC 2625